

STATE OF TENNESSEE

Office of the Attorney General



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Reply to:
Consumer Advocate and Protection Division
Attorney General's Office
P.O. Box 20207
Nashville, TN 37202

January 31, 2003

Hon. Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Complaint and Petition to Intervene in BellSouth Telecommunications, Inc.'s
Tariff to Introduce Welcoming Reward Program
Docket No. 03-00060

Dear Chairman Kyle:

Enclosed is an original and fourteen copies of the Consumer Advocate and Protection Division's Complaint and Petition to Intervene in BellSouth Telecommunications, Inc.'s Tariff to Introduce Welcoming Reward Program (Tariff No. 2003017). Copies are being furnished to counsel of record for interested parties.

Sincerely,

A handwritten signature in cursive script, reading "Joe Shirley".

Joe Shirley,
Assistant Attorney General

cc: Counsel of Record
52476

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

**IN RE: BELL SOUTH
TELECOMMUNICATIONS, INC.
TARIFF TO INTRODUCE
WELCOMING REWARD PROGRAM
(TARIFF NO. 03-017)**

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DOCKET NO. 03-00060

COMPLAINT AND PETITION TO INTERVENE

Comes now Paul G. Summers, the Attorney General & Reporter, through the Consumer Advocate and Protection Division of the Office of Attorney General (hereinafter "Attorney General"), pursuant to Tenn. Code Ann. § 65-4-118 and Rule 1220-1-2-.02 of the Tennessee Regulatory Authority and respectfully petitions to intervene in this case on behalf of the public interest since consumers may be affected by actions taken in this docket. The Attorney General petitions as follows:

1. The Attorney General has a duty and the authority under Tenn. Code Ann. § 65-4-118(c)(2)(A) to represent the interests of Tennessee consumers of public utilities services.
2. Additionally, under Tenn. Code Ann. § 8-6-109, the Attorney General has the duty and authority to attend to all business of the state.
3. The Attorney General is authorized by Tenn. Code Ann. §§ 65-4-118 and 65-5-210(b) to initiate, participate or intervene in proceedings to represent the public interest in accordance with the Uniform Administrative Procedures Act ("UAPA").
4. BellSouth Telecommunications, Inc. ("BellSouth") is a telecommunications carrier regulated by the Tennessee Regulatory Authority ("TRA") pursuant to Tenn. Code Ann. §§ 65-4-101

and 65-4-104. BellSouth's usual address for service is 333 Commerce Street, Nashville, Tennessee 37201-3300.

5. BellSouth filed a tariff entitled the "2003 Welcoming Reward Program" (the "Tariff") seeking approval to offer a \$100 per line/per location bonus for certain business customers who subscribe to business basic local service or its equivalents. To qualify for the bonus, the customer must meet certain terms and conditions, including the following: (1) the customer must be a "new BellSouth business customer"; (2) the customer must be located in BellSouth's Rate Group 5 service area (i.e., the Chattanooga, Knoxville, Memphis, or Nashville metropolitan area calling (MAC) region); (3) the customer must have aggregate annual billing, per state of BellSouth service, not exceeding \$36,000 at the time of enrollment; (4) the customer must sign a 12-month term service contract on or between the dates of February 3, 2003 and May 2, 2003; and (5) the customer must agree to pay termination liability charges should the customer terminate the service contract prior to its expiration. The Tariff further provides that the program is available for resale for the duration of the enrollment period.

6. Pursuant to 47 U.S.C. §§ 251(b)(1) and 251(c)(4) and related rules and orders of the Federal Communications Commission ("FCC") and the TRA, BellSouth, as an incumbent local exchange carrier, has the duties: (a) to resale at established wholesale rates any retail telecommunications services that it provides to customers who are not telecommunications carriers; and (b) to avoid imposing unreasonable or discriminatory conditions or limitations on the resale of telecommunications services.

7. Although the Tariff on its face provides that the program offered therein is available for resale, practical application of the Tariff precludes competing carriers from reselling the program

to many potential customers who are not appropriately classified as "new business customers" under the terms of the Tariff. Moreover, in those limited situations where competing carriers may qualify to resell the Tariff, it is unclear from the face of the Tariff if service will be resold at the wholesale discount rates established by the TRA. Such restrictions on resale of the Tariff are inconsistent with, and could constitute a breach of, BellSouth's resale duties and obligations that are identified in Paragraph 6, *supra*.

8. The Tariff discriminates between "new business customers" as defined in the Tariff (including former BellSouth customers who return their service to BellSouth and customers who seek service from BellSouth for the first time), and other business customers (including currently existing customers who have never terminated service and customers who subscribe to service outside the enrollment period). "New business customers" will pay a lower rate via bonuses than other business customers for the same service in the same serving area. On its face, the only difference between "new business customers" and other business customers is the timing for selection of service created by the Tariff. Based on available information and belief, such temporal differences among customers have not traditionally been recognized as sufficient justification to offer different rates to customers who are otherwise similarly situated. The Tariff therefore could constitute unjust discrimination among business customers in violation of Tenn. Code Ann. §§ 65-4-122 and 65-5-204(a).

9. Operation of the Tariff presents several concerns with respect to BellSouth's competitive behavior. First, the Tariff discriminates against competing carriers because the Tariff realistically cannot be resold to a large segment of potential customers — i.e., customers that are not classified as "new business customers" per the Tariff. Second, the Tariff tends to bind new and

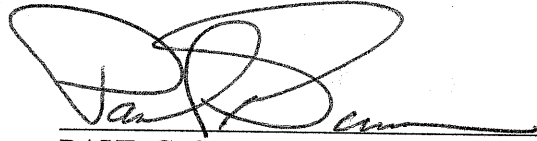
returning business customers for a specified period of time by requiring “new customers” to sign term contracts loaded with back-end termination liabilities. Third, the Tariff could create an impermissible price squeeze because the bonuses provisioned through the Tariff cannot be resold by competing carriers on their initial attempt to win business customers from BellSouth. Fourth, the Tariff could inappropriately inflate the customer acquisition costs of competing carriers by requiring such carriers to essentially win the business customer from BellSouth twice — once to initially attract the customer from BellSouth, and a second time to attract the customer again after BellSouth has marketed the Tariff to the customer. In summary, BellSouth has an economic incentive to favor its retail operation over competing carriers. Through application of the Tariff, BellSouth can exploit its role as the wholesale provider of telecommunications services, and its favorable market position and power, to gain advantages for its retail operation to the detriment of competing carriers. If pursued, such activities on the part of BellSouth could rise to the level of unjust or anti-competitive practices in violation of Tenn. Code Ann. §§ 65-5-208(c), 65-4-115, 65-4-122, and 65-5-204(a).

10. Both federal and state policymakers have proclaimed that consumers will benefit from the development of competition in telecommunications markets. *See Preamble, Telecommunications Act of 1996; Tenn. Code Ann. § 65-4-123.* If a contested case is convened, the proceeding will involve issues concerning the development of competition in Tennessee’s telecommunications markets.

11. Only by participating and/or intervening in this proceeding can the Attorney General accomplish the purposes set forth by the General Assembly to represent and protect the interests of Tennessee consumers in matters involving public utility services.

WHEREFORE, the Attorney General prays that the Tennessee Regulatory Authority convene a contested case for the purpose of evaluating the issues in this matter.

RESPECTFULLY SUBMITTED,

A handwritten signature in dark ink, appearing to read "Paul G. Summers", written over a horizontal line.

PAUL G. SUMMERS, B.P.R. # 6285
Tennessee Attorney General

A handwritten signature in dark ink, appearing to read "Joe Shirley", written over a horizontal line.

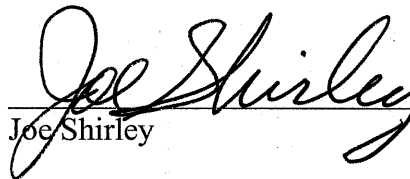
JOE SHIRLEY, B.P.R. #22281
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202
(615) 532-2590

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Complaint and Petition to Intervene was served on parties below via facsimile and U.S. Mail, postage prepaid, on the 31st day of January, 2003.

Guy M. Hicks, Esquire
General Counsel
BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300

Henry Walker, Esquire
Boult, Cummings, Connors & Berry, PLC
414 Union Street, Suite 1600
P.O. Box 198062
Nashville, Tennessee 37219



Joe Shirley

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